STATE OF MICHIGAN

COURT OF APPEALS

GWYN DAVIDSON,

Plaintiff-Appellee,

v

DENNIS BELLEHUMEUR,

Defendant-Appellant,

and

GARY SHULTE, PERSONAL THERAPISTS, INC., STAFFCO SERVICES, INC., and MEDI STAFF, INC.,

Defendants.

UNPUBLISHED
July 30, 2002

No. 222814
Wayne Circuit Court
LC No. 95-537258-CZ

Before: Whitbeck, C.J., and O'Connell and Meter, JJ.

PER CURIAM.

Defendant Dennis Bellehumeur ("defendant") appeals by leave granted[1] from an order denying his motion to set aside a default judgment. We affirm.

Plaintiff sued defendants for failing to pay her for unused sick and vacation time after allegedly assuring her that she would be paid for this time. Plaintiff's claims against Staffco Services, Inc., and Medi Staff, Inc., were dismissed by stipulation. Plaintiff and the remaining defendants then executed a settlement agreement in which plaintiff agreed to dismiss her claims against them in exchange for $7,500, paid in four monthly payments of $1,875. The trial court subsequently entered a stipulated order dismissing plaintiff's claims with prejudice. However, plaintiff failed to receive the third and fourth monthly payments under the settlement agreement, so she filed a motion to set aside the order of dismissal under MCR 2.612, the rule governing relief from judgment. The trial court granted plaintiff's motion.

[1] Although defendant filed a claim of appeal, this Court treated defendant's claim of appeal as an application for leave to appeal and granted the application. *Davidson v Bellehumeur*, unpublished order of the Court of Appeals, entered December 21, 2001 (Docket No. 222814).

When defendant failed to respond to interrogatories and other requests for information and did not sign for mail sent by plaintiff, plaintiff filed a motion for default against him.[2] The trial court granted plaintiff's motion for default and set a date for a hearing on plaintiff's motion for default judgment. It appears from the record that defendant then filed a motion for a protective order or a continuance, arguing that he had only learned of the default and impending default judgment approximately one week before the scheduled hearing. Defendant contended that he was unaware of any legal proceedings that occurred after the case was dismissed with prejudice under the settlement agreement. Nonetheless, the trial court entered a default judgment against defendant for $33,000. Defendant then moved for relief from judgment under MCR 2.612, arguing that the trial court should not have set aside the order of dismissal and reopened the case on the basis of defendant's failure to proffer the required consideration. Without articulating its reasoning, the trial court denied defendant's motion.

Defendant argues on appeal that the trial court should not have reinstated plaintiff's claims because the settlement agreement and the dismissal with prejudice were final and binding. Defendant contends that plaintiff's only remedy was to sue for breach of the settlement agreement. He contends that the court had no basis under MCR 2.612, the relief-from-judgment court rule, to reinstate the case. We review a trial court's ruling on a motion for relief from judgment for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

We first note that defendant's appellate brief lacks a meaningful discussion of Michigan law with regard to this issue. As noted in *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959):

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.

An issue that has been given cursory treatment with little or no citation to relevant supporting authority is not properly presented for review. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Because defendant has not properly presented this issue for appeal, he has essentially waived it.

In any event, we find no merit to defendant's argument. MCR 2.612(C) states, in part:

> (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
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> (a) Mistake, inadvertence, surprise, or excusable neglect.

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[2] Plaintiff did not move for default against the two remaining defendants.

> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
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> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
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> (d) The judgment is void.
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> (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
>
> (f) Any other reason justifying relief from the operation of the judgment.

In *Heugel, supra* at 478-479, this Court noted that for relief to be granted under MCR 2.612(C)(1)(f), the following three requirements must be met: "(1) the reason for setting aside the judgment must not fall under subsections a through e,[3] (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice." Moreover, relief is usually granted under subsection f only if "the judgment was obtained by the improper conduct of the party in whose favor it was rendered." *Heugel, supra* at 479.

We conclude that there were extraordinary circumstances here. Indeed, by failing to honor the settlement agreement defendant vitiated the reason for the lawsuit's dismissal, and it would be a waste of judicial resources to require plaintiff to file a new action for breach of contract in order to recoup her damages. Moreover, although the judgment of dismissal was not initially obtained by defendant's improper conduct, it was defendant's subsequent improper conduct in failing to pay the settlement amount that caused the dismissal to be unfair to plaintiff. Under these circumstances, we cannot say that the trial court overstepped the stringent abuse of discretion standard by reinstating plaintiff's claims. See *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999) (setting forth the abuse of discretion standard and noting its stringent nature).

Defendant also contends that the trial court erroneously awarded damages of $33,000 when the unsatisfied settlement amount was only $3,750. Plaintiff contends that the amount was based on her "expenses and fees to have the dismissal set aside and the risk that all litigation brings once suit was reinstated." Defendant does not cite any relevant law in support of his argument and has therefore waived it. See *Silver Creek Twp, supra* at 99, and *Palo Group, supra* at 152. Moreover, defendant has failed to provide us with the transcript of the relevant hearing with regard to damages. See MCR 7.210(B)(1)(a) (appellant responsible for providing

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[3] However, the *Heugel* panel went on to conclude that relief under subsection f is appropriate "even where one or more of the bases for setting aside a judgment under subsections a through e are present, when additional factors exist that persuade the court that injustice will result if the judgment is allowed to stand." *Heugel, supra* at 481.

transcripts) and MCR 7.212(C)(7) (appellant must make specific references to filed transcripts in making his arguments). Given the lack of evidence that the trial court acted impermissibly in awarding the damages, we discern no basis for appellate relief.

Next, defendant argues that the trial court erred by failing to set aside the default judgment because plaintiff did not notify him that a default had been entered or that she was seeking a default judgment until approximately one week before the hearing on plaintiff's motion for a default judgment. Although defendant refers to the default and default judgment court rule, MCR 2.603, in making this argument on appeal, below he referred to only MCR 2.612.[4] We therefore address this issue as a denial of relief from judgment.

Under MCR 2.612(B), a trial court may grant relief from a judgment if the defendant did not have notice of the pendency of the action. Defendant contends that he in fact did not have such notice. However, plaintiff filed two letters, purportedly sent to defendant's home address in Florida and his work address at Personal Therapists, Inc., in Livonia, Michigan, informing him that a default had been entered against him. Defendant never alleged below and does not allege on appeal that the Florida address used by plaintiff was incorrect. Moreover, plaintiff filed a notice of hearing on June 11, 1999, indicating that she mailed defendant a notice of the June 25, 1999, default judgment hearing to defendant's address in Florida and to Personal Therapists, Inc., in Livonia. Plaintiff also filed a proof of service stating that she mailed her motion for default judgment to defendant in Florida and to Personal Therapists, Inc, in Livonia on May 21, 1999. Under these circumstances, the trial court did not abuse its discretion in rejecting defendant's argument regarding a lack of notice.

Moreover, in *National Car Rental v S & D Leasing, Inc*, 89 Mich App 364, 368; 280 NW2d 529 (1979), this Court explained that relief under former GCR 1963, 528.2 (substantially similar to current MCR 2.612[B]), was warranted only if the defendant did not have *actual notice* of the proceedings. Here, defendant admits that he had actual notice of the impending default judgment approximately one week before the default judgment was entered. Because defendant had actual notice of the pendency of the default judgment hearing, no error under MCR 2.612(B) occurred.

Even if we were to address this issue with reference to MCR 2.603, despite defendant's failure to cite this court rule below, we would find no basis for appellate relief. Indeed, plaintiff substantially complied with the notice requirements of MCR 2.603(A)(2) and (B)(1). Again, defendant did not and does not allege that the Florida address to which plaintiff addressed the relevant notices was incorrect. A trial court does not abuse its discretion in concluding that there is not good cause to set aside a default judgment if the defaulting party alleges that it did not receive multiple notices of proceedings sent to the correct address. See *Zaiter v Riverfront Complex, Ltd*, 463 Mich 544, 552-553; 620 NW2d 646 (2001). Moreover, this Court has considered a defendant's failure to assert that a notice was sent to the wrong address in determining whether he was on notice of the proceedings. See *Dittenber v Rettelle*, 162 Mich

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[4] It is unclear why, in the trial court, defendant did not seek to set aside the default judgment under MCR 2.603(D).

App 430, 436; 413 NW2d 70 (1987). No error under MCR 2.603 occurred, and no manifest injustice resulted from the trial court's refusal to vacate the judgment.[5]

Finally, defendant argues that the trial court erred by granting a default judgment against defendant individually because he, as an officer of a corporation, was not personally liable for the damages claimed by plaintiff. However, defendant cites no Michigan law in support of his argument and has therefore waived it. See *Silver Creek Twp, supra* at 99, and *Palo Group, supra* at 152. Nonetheless, we discern no basis for relief. Indeed, plaintiff made allegations of fraud against defendant individually, and defendant signed the settlement agreement in his individual capacity. Under these circumstances, no error occurred.

Affirmed.

/s/ William C. Whitbeck
/s/ Patrick M. Meter

[5] We note that plaintiff's failure to file a proof of service regarding the notice of entry of default, while being a violation of MCR 2.603(A)(2)(b), was not, in our opinion, a substantial defect or irregularity in the proceedings warranting the setting aside of the default judgment.